

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5381

DATE COMPLAINT FILED: August 8, 2003

DATE OF NOTIFICATION: August 15, 2003

DATE ACTIVATED: March 1, 2004

EXPIRATION OF SOL: June 14, 2007

COMPLAINANT:

Seldon O. Young

RESPONDENTS:

Rob Bishop for Congress and
Christopher Larry Brown, as treasurer
Rob Bishop
Utah League of Credit Unions
America First Credit Union
Tooele Federal Credit Union
Deseret First Credit Union
Mountain America Credit Union
Horizon Credit Union
Goldenwest Credit Union
Box Elder County Credit Union
USU Community Credit Union

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(8)(B)(vii)
2 U.S.C. § 431(9)(B)(iii)
2 U.S.C. § 432(e)(2)
11 C.F.R. §§ 100.5(g)(2)-(4)
11 C.F.R. § 100.7(b)(3)
11 C.F.R. § 100.7(b)(11)
11 C.F.R. § 100.7(b)(11)(i)(A)
11 C.F.R. § 100.7(b)(11)(i)(B)
11 C.F.R. § 100.7(b)(11)(ii)
11 C.F.R. § 100.8(b)(4)
11 C.F.R. §§ 100.8(b)(4)(iv)(A)(1)-(6)
11 C.F.R. § 100.22(a)
11 C.F.R. § 104.6

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11 C.F.R. § 110.10
11 C.F.R. §§ 114.1(e)(1)(i)-(vi)
11 C.F.R. §§ 114.1(e)(2)(i), (ii), (iii)
11 C.F.R. § 114.1(e)(5)
11 C.F.R. § 114.1(j)
11 C.F.R. § 114.3(a)(2)
11 C.F.R. § 114.3(b)
11 C.F.R. § 114.3(c)
11 C.F.R. § 114.8(a)
11 C.F.R. § 114.8(h)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

In 2002, the Utah League of Credit Unions ("ULCU") and eight of its member credit unions supported Rob Bishop's Congressional campaign for Utah's 1st District seat. During the campaign, the ULCU and its member credit unions expressly advocated for Mr. Bishop through a newsletter, direct mailings, recorded telephone messages and polling, and neighborhood canvassing. One of the credit unions also approved a line of credit for the candidate. Complainant now alleges that the ULCU, the credit unions, and Mr. Bishop violated the Federal Election Campaign Act of 1971, as amended ("the Act")¹, by failing to properly report disbursements for communications and by improperly granting the loan to Mr. Bishop. However, based on the complaint, the responses, and publicly available information, the ULCU, the credit unions, and Mr. Bishop did not violate the Act for two reasons.

¹ The events that are the subject of this complaint occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations in this report pertain to those that were in effect prior to the implementation of BCRA.

First, the ULCU and its member credit unions complied with the Act when reporting costs associated with the newsletter, direct mailings, recorded telephone messages, polling and canvassing.

- The Act did not require the ULCU to report the costs associated with the Summer 2002 edition of THE CREDIT UNION ADVOCATE, because the newsletter, which qualified as a membership communication, primarily addressed nonfederal election matters.
- As documented by vendor invoices, respondents accurately reported all expenditures associated with direct mailings and recorded telephone messages that advocated voting for Mr. Bishop.
- The Act did not require the ULCU to report costs associated with telephone polling, and the credit unions were not required to report costs associated with canvassing by their employees. First, the telephone poll does not constitute express advocacy. Second, as indicated by the evidence, the canvassing was unreimbursed volunteer activity conducted by individual citizens.

Second, Mr. Bishop legally obtained the line of credit from America First Credit Union.

The loan documentation submitted by the credit union indicates the terms of the loan were not unduly favorable to Mr. Bishop, and the credit union followed customary practices and procedures when it approved the loan.

Therefore, based on these reasons, this Office recommends the Commission find no reason to believe the respondents violated the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Respondents Complied with the Act When Reporting Internal Communications Expenditures.

Respondents were not required to report their costs associated with the newsletter, telephone polling or neighborhood canvassing, and they accurately reported their costs associated with direct mailings and recorded telephone messages. Commission regulations expressly permit

1 incorporated trade associations to make partisan communications, including phone calls and
2 direct mailings, to their individual members. 11 C.F.R. §§ 114.3(a)(2), 114.3(c), and 114.8(h).

3 An incorporated trade association may make communications containing express advocacy to its
4 restricted class, provided, in the case of publications, that the material is produced at the expense
5 of the trade association; the communication contains the views of the trade association, and is not
6 the republication or reproduction, of any campaign materials prepared by the candidate; and
7 provided the costs associated with the communication are reported in accordance with 11 C.F.R.
8 §§ 100.8(b)(4) and 104.6. *See* 11 C.F.R. §§ 114.3(c)(1)(i)-(iii) and 114.8(h). If the costs of such
9 communications exceed \$2,000 then they are required to be reported to the FEC on Form 7.
10 *See* 2 U.S.C. § 431(9)(B)(iii); *see also* 11 C.F.R. §§ 100.8(b)(4) and 104.6. However, if the
11 communication is primarily devoted to subjects other than the express advocacy of the election or
12 defeat of a clearly identified candidate for Federal office, then the costs of such communication
13 are not required to be reported. *See id.*

14 A threshold question, however, is whether the ULCU qualifies as a trade association and
15 whether the respondent credit unions qualify as members as defined by the Commission's
16 regulations so as to benefit from these provisions. As discussed below, the ULCU meets the
17 definition of a trade association, and the respondent credit unions qualify as members as defined
18 by the regulations under the Act. In turn, the individual share account holders qualify as
19 members of the respondent credit unions. Because the credit unions and the ULCU are members
20 of the Credit Union National Association, which the Commission has determined to be a
21 federation, the members of the individual credit unions also qualify as members of the ULCU,
22 and therefore, could receive membership communications from the ULCU.

1 **1. *The ULCU Was Not Required to Report the Costs Associated***
2 ***with its Newsletter.***

3
4 Under the Act, the costs associated with the ULCU's Summer 2002 newsletter were not
5 required to be reported, because it was a membership communication, the bulk of which was
6 devoted to nonfederal election matters. The Act does not require trade associations to report
7 costs of communications primarily devoted to subjects other than the express advocacy of the
8 election or defeat of a clearly identified candidate for Federal office. *See* 2 U.S.C.
9 § 431(9)(B)(iii); *see also* 11 C.F.R. §§ 100.8(b)(4) and 104.6.

10 Based on these three criteria, the Commission should find no reason to believe that the
11 ULCU violated 2 U.S.C. § 431(9)(B)(iii) in connection with its newsletter.

12 **a. *The ULCU is a Trade Association.***
13

14 Based on available information, the ULCU clearly meets the criteria of a specific type of
15 membership organization: a trade association. According to its response, the ULCU is a trade
16 association of member Utah credit unions, exempt from taxation under 26 U.S.C. § 501(c)(6) of
17 the Internal Revenue Code. *See* Credit Unions' Response at p. 2.² Under the Commission's
18 regulations, a trade association is a membership organization of persons engaging in a similar or
19 related line of commerce, organized to promote and improve business conditions in that line of
20 commerce. Trade associations may not engage in a regular business of a kind ordinarily carried
21 on for profit, or that generates net earnings that inure to the benefit of any member. 11 C.F.R.
22 § 114.8(a).

² Respondents Box Elder County Credit Union, Deseret First Credit Union, Goldenwest Credit Union, Horizon Credit Union, Mountain America Credit Union, Tooele Federal Credit Union, USU Community Credit Union, and the ULCU submitted a combined response to the complaint. For simplicity's sake, their combined response will be referred to as "Credit Unions' Response." Respondent America First Credit Union submitted a separate response, which will be referred to as "America First's Response."

As one type of membership organization, the trade association must also possess certain attributes that any organization must possess in order to be regarded as a "membership organization" within the meaning of the regulations. Specifically, it must (1) be composed of members, some of whom are vested with authority to administer the organization pursuant to the organization's formal organizational documents; (2) expressly provide for the requirements and qualifications for membership in its formal organizational documents; (3) make its formal organizational documents available to its members; (4) expressly solicit members; (5) expressly acknowledge the acceptance of membership; and (6) not be organized primarily for the purpose of influencing Federal elections. 11 C.F.R §§ 100.8(b)(4)(iv)(A)(1)-(6) and 114.1(e)(1)(i)-(vi).

According to publicly available information, the ULCU is composed of member credit unions throughout the state of Utah; and each member credit union is composed of individual share account holders. See ULCU's *League Services Statement*, available at www.ulcu.com.³ Together, the ULCU and the member credit unions are members of the Credit Union National Association ("CUNA"). See Advisory Opinion 1998-19.⁴ The ULCU's statement of *Membership Based on Eligibility* sets forth the requirements and qualifications for membership. See www.ulcu.com. The ULCU's Web site expressly solicits persons to become members.

³ We do not have the ULCU's "formal organizational documents," which means articles of incorporation, bylaws, or constitution. See 11 C.F.R. §§ 100.8(b)(4)(iv)(A)(1)-(6) and 114.1(e)(1)(i)-(vi). However, the information obtained from the ULCU's Web site appears to sufficiently address the membership organization criteria for present purposes.

⁴ Advisory Opinion 1998-19 concluded that CUNA is a federation of trade associations in view of the relationships among CUNA, the State leagues, and their member credit unions. The Commission concluded that the individual share account holders could be solicited by CUNA. However, the Commission refrained from concluding in that opinion that the individual share account holders in CUNA-member credit unions were members of CUNA. See Advisory Opinion 1998-19; see also Advisory Opinion 2000-15. The regulatory definition of "member" was different in 1998, and it was not at that time certain that share account holders would have qualified as "members" of their local credit unions under the definition then in place.

1 *See id.* Membership is expressly acknowledged by including the credit union's name on a
2 membership list found at its Web site. *See* ULCU's *Utah Credit Unions List*, available at
3 www.ulcu.com. The ULCU's *Statement of Commitment to Members* expressly sets forth that its
4 member credit unions have authority to administer the organization. For example, every member
5 credit union has an equal number of votes toward the ULCU's board of directors; no one credit
6 union can disproportionately influence the outcome of the board composition; and the credit
7 unions can directly address the board of directors on issues facing the ULCU at its annual
8 meeting. *See Statement of Commitment to Members, Section 3: Involvement/Governance*,
9 available at www.ulcu.com. Individual share account holders, in turn, are given one vote in the
10 election of the local credit union's board of directors; have the option of running for their credit
11 union's board; and have the power to choose who leads their financial institution. *See*
12 *Membership Benefits*, available at www.ulcu.com. No information suggests that the ULCU was
13 organized, or is operating, primarily for the purpose of influencing Federal elections. Based on
14 these attributes, the ULCU appears to qualify as a "membership organization" within the
15 meaning of the regulations. In addition, the ULCU primarily engages in legislative lobbying,
16 conducting public relations, and providing credit union information, education, and training to its
17 members. *See Statement of Commitment to Members*, available at www.ulcu.com. The
18 ULCU's primary purpose is to promote and improve business conditions relating to the operation
19 of credit unions and their individual credit union members. *See id.* Thus, the ULCU appears to
20 qualify as a trade association.

b. The ULCU Could Send the Newsletter to Members of its Members' Restricted Class, And Sent it Only to Those Persons.

As noted above, the ULCU is one type of a membership organization: a trade association. It comprises credit unions involved in the credit union industry in Utah. Each respondent credit union in this matter identified itself as a cooperative on its respective FEC Form 7 filed with the Commission. See FEC disclosure reports.

A "member" includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either: (1) have some significant financial attachment, investment or ownership to the membership organization; or (2) pay membership dues; or (3) have some significant organizational attachment to the membership organization, such as direct participatory rights in the governance of the organization, including the right to vote directly or indirectly for an individual on the membership organization's highest governing board. See 11 C.F.R. §§ 100.8(b)(4)(iv)(B) and 114.1(e)(2).

The respondent credit unions in this matter satisfy the definition of "member" in that they are listed as members on ULCU's Web site, they hold themselves out as members, and they have governance rights in the ULCU. See *Statement of Commitment to Members, Section 3: Involvement/Governance*; see also *Utah Credit Unions List*, available at www.ulcu.com; see also *Credit Unions' Response*, at p. 2. In turn, the individual share account holders also satisfy the definition of "member" of their individual credit unions, in that they have the governance rights described *supra*, coupled with equity ownership of the credit union in the form of shares (*i.e.*, the right to save, borrow, and obtain related financial services). Therefore, the

1 respondent credit unions are members of the ULCU, and the individual share account holders are
2 members of the respondent credit unions.

3 In the case of a membership organization that has several levels, including, for example,
4 state, regional and/or local affiliates, a person who qualifies as a member of any entity within the
5 federation or of any affiliate by meeting the requirements of 11 C.F.R. §§ 114.1(e)(2)(i), (ii), or
6 (iii)⁵ shall also qualify as a member of all affiliates. 11 C.F.R. § 114.1(e)(5). The Commission
7 previously determined in Advisory Opinion 1998-19 that the Credit Union National Association
8 is a federation; thus, by virtue of 11 C.F.R. § 114.1(e)(5), the members of the local credit unions
9 were also members of ULCU and could receive its membership communications.

10 The ULCU produced the newsletter, and its member credit unions sent the newsletter to
11 their individual share account holders. *See Credit Unions' Response*, at pp. 4, 13; *see also*
12 *America First's Response*, at p. 19. The newsletter's banner states it is "published for the benefit
13 of Utah's 1.2 million Credit Union members." *See Credit Unions' Response*, Attachment 6.
14 Thus, the ULCU's individual share account holders, and not the general public, were the targets
15 of the newsletter.

⁵ 11 C.F.R. § 114.1(e)(2) sets forth, in pertinent part, that

... the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

- (i) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
- (ii) Pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (iii) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

1 Based upon these factors, the ULCU could send the newsletter to its members' restricted
2 class, and sent it only to those persons.

3 ***c. The Newsletter Primarily Focused on Subjects Other Than the***
4 ***Express Advocacy of Mr. Bishop.***
5

6 The Summer 2002 edition of the CREDIT UNION ADVOCATE contains four pages. A copy
7 of the newsletter is attached to the Credit Unions' Response as Attachment 6. The front page of
8 the newsletter consists of one article, which is devoted to express advocacy statements
9 supporting Mr. Bishop in the Republican primary election.⁶ The following express advocacy
10 statements appear on the front page: "Vote Rob Bishop on June 25th," "Your credit union needs
11 you to vote in the primary election on June 25, and to cast your vote for Rob Bishop;" and "We
12 are pleased to support and recommend that your vote in the June 25 Republican primary be cast
13 for Rob Bishop." See Credit Unions' Response, Attachment 6. The article on the front page also
14 contains descriptions of the candidates, including their backgrounds, educations, and work
15 histories. The article compares Mr. Bishop with his opponent, Kevin Garn, and tells the reader
16 that Mr. Bishop is the candidate who will help credit unions and their members the most. See *id.*
17 The remaining three pages of the newsletter concern other issues, including advocacy for
18 nonfederal candidates, and items on nonpolitical subjects, such as the safety afforded by credit
19 unions, rising bank fees, and low credit union fees. See *id.*

20 The legislative history of 2 U.S.C. § 431 (9)(B)(iii) tells us that the term "primarily
21 devoted to" in the case of a publication means ". . . the *major portion* of space is devoted to
22 advocating the election or defeat of a candidate." See CONG. REC. pp. 12199, 12200 (May 3,
23 1976) (statement of Mr. Hays from Ohio) (emphasis added); see also H.R. Rpt. 94-1057, 94th

⁶ The Republican primary election took place on June 25, 2002. This Office does not have any information concerning the date the newsletter was circulated

1 Cong., 2d Sess. 41-42 (1976) (a special edition of a newsletter would not be a covered
2 communication under 2 U.S.C. § 431(9)(B)(iii)). In this instance, only one-quarter of the
3 newsletter concerned express advocacy of a candidate for Federal office. Approximately 105/8
4 column inches of text (not including headlines, pictures or art) contained express advocacy of the
5 election or defeat of a Federal candidate. Approximately 24½ column inches related to the topics
6 other than express advocacy. Fifty square inches of the printed materials (including headlines,
7 pictures, and art, but not including the address and return address) contained express advocacy of
8 the election or defeat of a Federal candidate – whereas approximately 191 square inches of the
9 printed materials do not relate to Federal elections. *See Credit Unions' Response*, at p. 12.

10 While the complaint's allegation that the newsletter contained statements expressly
11 advocating the election of Mr. Bishop to Federal office is accurate, this fact alone is not
12 sufficient to establish a violation of the Act. As set forth in the previous section, the individual
13 share depositors of the credit unions qualify to receive membership communications, which may
14 contain express advocacy, from the ULCU. Because the ULCU is a trade association, such
15 communications, if in the form of publications, must be produced at the expense of the trade
16 association; contain the views of the trade association; and not be the republication or
17 reproduction, of any campaign materials prepared by any candidate. Moreover, the costs
18 associated with the communication must be reported in accordance with 11 C.F.R.
19 §§ 100.8(b)(4) and 104.6. *See* 11 C.F.R. §§ 114.3(c)(1)(i)-(iii), 114.8(h), and 114.1(j). If the
20 costs of such communications exceed \$2,000 then they are required to be reported to the FEC on
21 Form 7. *See* 2 U.S.C. § 431(9)(B)(iii); *see also* 11 C.F.R. §§ 100.8(b)(4) and 104.6.

22 The ULCU produced the newsletter, and its member credit unions sent the newsletter to
23 their individual share account holders. *See Credit Unions' Response*, at p. 13; *see also* America

1 First's Response, at p. 19. Each member credit union paid the costs of printing, mailing and
2 handling the newsletter. *See* Credit Unions' Response, at p. 4; *see also* America First's
3 Response, at p. 19. The ULCU's newsletter contains material constituting and communicating
4 the views of the ULCU. For example, the majority of the newsletter is devoted to issues
5 regarding the safety afforded by credit unions, and the fees of banks versus credit unions; and it
6 tells the reader that Mr. Bishop is a "friend and supporter of credit unions." *See* Credit Unions'
7 Response, Attachment 6. No information suggests that the express advocacy statements
8 contained in the newsletter concerning Mr. Bishop were a republication or reproduction, in whole
9 or in part, of any of Mr. Bishop's or his Committee's campaign materials.

10 The Act does not require trade associations to report costs of communications primarily
11 devoted to subjects other than the express advocacy of the election or defeat of a clearly
12 identified candidate for Federal office. *See* 2 U.S.C. § 431(9)(B)(iii); *see also* 11 C.F.R.
13 §§ 100.8(b)(4) and 104.6. The ULCU's newsletter was primarily devoted to subjects other than
14 the express advocacy of Mr. Bishop. *See* discussion *supra*.

15 Based upon the foregoing, the ULCU was not required to report the costs associated with
16 the 2002 summer edition of the CREDIT UNION ADVOCATE because it was a communication
17 primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly
18 identified candidate for Federal office, and it was circulated to members of the ULCU's restricted
19 class. Therefore, this Office recommends that the Commission find no reason to believe that the
20 Utah League of Credit Unions violated 2 U.S.C. § 431(9)(B)(iii).

2. ***The Member Credit Unions Accurately Reported All Costs They Were Required to For Internal Communications That Advocated Mr. Bishop's Election.***

Shortly before the Republican primary election, the member credit unions mailed postcards and sent recorded telephone messages to individual members of their restricted classes advocating the election of Mr. Bishop. *See* Complaint, at pp. 3-5; *see also* Credit Unions' Response, at pp. 2-3; *see also* America First's Response, at p. 15. The postcards⁷ and the recorded telephone messages⁸ expressly advocated the election of Mr. Bishop to the U.S. House of Representatives, and the disbursements associated with these communications exceeded \$2,000. *See id.* The member credit unions submitted copies of the vendor invoices for the communications with their responses to the complaint. After reviewing the vendor invoices, it is apparent that the disbursements were not underreported, but were actually over reported by \$1.23.

While the Complainant alleges that the member credit unions underreported their disbursements by at least \$93,000, he sets forth that he arrived at this figure through estimates. *See* Complaint, at p. 3. He does not provide any documentary evidence to support his figures. The Complainant estimates that 400,000 individual credit union members received the postcards and recorded telephone messages. He arrived at this figure by assuming that there are 1.2 million

⁷ Four different types of postcards were mailed, and contained statements as follows: "Because Rob Bishop supports Utah's credit unions and the families they work for, Utah's credit unions urge you to vote for Republican Rob Bishop on June 25;" "Rob Bishop is a credit union member like you. He fought at the legislature to protect the benefits of credit union members. In Congress Rob Bishop will stand up to the banks. That's why we urge you to vote for Republican Rob Bishop on June 25;" and "You and your family have a financial stake in [] this year's primary election. Vote Rob Bishop for Congress." *See* Complaint, Attachment A; *see also* Credit Unions' Response, Attachment 1.

⁸ Two sample scripts for the recorded telephone messages sent on June 20, 2002 are attached to the Credit Unions' Response. The first script contains the following statement: "I encourage you to vote for Rob Bishop in next Tuesday's primary election. Thank you for your time and please vote next Tuesday, and vote for Rob Bishop;" and "I urge you to be sure and vote tomorrow and vote for Rob Bishop—the one candidate who will fight to protect your credit union." *See* Credit Unions' Response, Attachment 4.

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1 individual credit union members in the state of Utah, and that "roughly one-third, or 400,000
2 credit union members" reside in Utah's First Congressional District. *See* Complaint, at p. 5. The
3 Complainant also estimates that the total cost of the communications (both the postcards and
4 recorded telephone messages) was \$164,000, calculated as follows: \$128,000 for the postcards
5 ("4 mailings at an estimated \$16,000 per mailing for printing costs and \$16,000 per mailing for
6 postage costs"), and \$36,000 for the recorded telephone messages (400,000 recorded telephone
7 messages at \$.09 per call). *See* Complaint, at p. 5. The complainant then subtracts the total
8 amount that the member credit unions reported on FEC Form 7s, \$70,347.44⁹, from his estimated
9 figure, \$128,000, to arrive at \$93,000 as the amount underreported by the member credit unions.
10 (\$128,000- \$70,347.44= \$93,652.56).

11 In response, the member credit unions submitted sworn affidavits from Scott G. Earl,
12 President and Chief Executive Officer of the ULCU¹⁰ and Barney B. Chapman, Senior Vice
13 President and the Chief of Staff of America First, as well as copies of the vendor invoices to
14 establish the accuracy of their reported disbursements. After reviewing these documents, it is
15 apparent that the disbursements were accurately reported. Attachment 1 contains a chart
16 comparing the vendor invoice amounts with the amounts reported on the FEC Form 7s.

17 The member credit unions set forth that they mailed approximately 246,900 postcards to

⁹ While the Complainant sets forth that the FEC Form 7s' total reported costs was \$70,347.44, a review of the FEC Form 7s shows that the total reported costs was actually \$64,976.73. The Complainant does not explain how he derived the \$70,347.44 figure.

¹⁰ Mr. Earl's affidavit was submitted on behalf of the following seven credit unions: Box Elder County Credit Union, Deseret First Credit Union, Goldenwest Credit Union, Horizon Credit Union, Mountain America Credit Union, Tooele Federal Credit Union, and USU Community Credit Union.

1 their individual credit union members.¹¹ The member credit unions were targeting individual
2 credit union members who were likely Republican primary voters in Utah's First Congressional
3 District.¹² The member credit unions set forth that only three of them: Deseret, Tooele and
4 Mountain America sent recorded telephone messages to targeted individual credit union members.
5 The vendor invoices show that those three member credit unions were billed for 37,775 recorded
6 telephone messages.

7 According to the vendor invoices, the member credit unions were billed for the printing
8 and mailing of a total of 246,882 postcards at a total cost of \$60,745.25. Three of the member
9 credit unions were also billed for 37,775 recorded telephone messages at a total cost of \$4,230.25.
10 Thus, the total communications costs, according to the vendor invoices, was \$64,975.50. The
11 FEC Form 7s report that the total communications costs were \$64,976.73. Therefore, the member
12 credit unions over reported their total communications costs by \$1.23. Moreover, the difference
13 between the reported communications costs and the actual communications costs is *de minimus*.

14 Based on the above, this Office recommends that the Commission find no reason to
15 believe America First Credit Union, Box Elder County Credit Union, Deseret First Credit Union,
16 Goldenwest Credit Union, Horizon Credit Union, Mountain America Credit Union, Tooele
17 Federal Credit Union, and USU Community Credit Union violated 2 U.S.C. § 431(9)(B)(iii).

¹¹ Seven of the member credit unions sent 4 different types of postcards to 27,500 individual credit union members (110,000 postcards mailed); America First sent 4 different types of postcards to 34,225 individual credit union members (136,900 postcards mailed) (110,000 + 136,900 = 246,900). See Credit Unions' Response, at 3; see also Earl Affidavit, at ¶ 4; see also America First's Response, Chapman Affidavit, at ¶ 17

¹² As discussed *supra*, the complaint assumes that postcards were mailed to all voters in Utah's First Congressional District, but provides no documentation to support this assumption

1 **3. The Act Did Not Require the ULCU to Report Costs Associated with**
2 **Telephone Polling, and the Credit Unions Were Not Required to Report**
3 **Costs Associated with Volunteer Neighborhood Canvassing.**

4
5 **a. Telephone Polling**

6
7 The ULCU commissioned a telephone poll conducted by Voter Consumer Research on
8 June 5 and 6, 2002. A copy of the poll questionnaire is attached to the Credit Unions' Response
9 at Attachment 8. Four hundred individual credit union members, who were likely Republican
10 primary voters in Utah's First Congressional District, were interviewed; the ULCU used the
11 information obtained from the poll to determine whether the credit unions would undertake any
12 communications to their individual members allowed by Federal law. *See Credit Unions'*
13 *Response*, at p. 16; *see also Earl Affidavit*, at ¶ 16. The poll results were not shared with Mr.
14 Bishop or any other candidate for Federal office. *See Earl Affidavit*, at ¶ 17.

15 Express advocacy communications made by a membership organization to its restricted
16 class are required to be reported under the Act, when those costs exceed \$2,000. *See 2 U.S.C.*
17 § 431(9)(B)(iii); *see also 11 C.F.R. §§ 100.8(b)(4) and 104.6*. After reviewing the poll's
18 questions, the Office believes that the poll does not constitute a communication expressly
19 advocating the election or defeat of one or more clearly identified candidate(s) for Federal
20 office.¹³ *See id.* As such, the ULCU was not required to report the disbursements associated
21 with the poll.

¹³ The Commission's regulations define "expressly advocating" as any communication that uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). *See 11 C.F.R. § 100.22(a)*; *see also Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976) ("Express advocacy" must contain words expressly advocating the election or defeat of a clearly identified candidate, such as "vote for," "elect," "support," "Smith for Congress," or the like.). Express advocacy may also be found when the communication, when taken as a whole and with limited reference to external events, could only be interpreted by as reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s). 11 C.F.R. § 100.22(b). Circuit courts have taken different views on the

1 Of the poll's 46 questions, 4 of them concerned voter identification and voting history;
2 7 of the questions concerned the voter's attitudes towards, knowledge of, and use of credit unions
3 and the services they provide; 2 of the questions concerned the voter's views on what issues are
4 important in the Republican primary election; 8 of the questions concerned candidate recognition
5 and the voter's preferences; and 6 of the questions sought to obtain personal information about
6 the voter, including age, gender, education, and household income. *See Credit Unions'*
7 *Response, Attachment 8.*

8 Less than one-half of the questions contained descriptions of the candidates. *See id.*
9 While descriptions of Mr. Bishop's educational background, work history, and political views are
10 provided in the questions, so too are his opponent, Kevin Garn's. The poll questions contained
11 even-handed descriptions of the Republican primary candidates' backgrounds and political
12 views, and queries voters who they are most likely to vote for. For example, the poll sets forth
13 that Mr. Bishop, "wants to get the federal government out of education, cut taxes, and strengthen
14 our military." *See Credit Unions' Response, Attachment 8, Question 15.* When describing his
15 opponent, the poll sets forth that Mr. Garn "wants to reduce control of the federal government,
16 returning power to the state and local governments. He will work to eliminate the current tax
17 system in favor of a flat income tax, and wants to ensure Utah receives its fair share of education
18 funding." *See Credit Unions' Response, Attachment 8, Question 17.* Nothing in the poll
19 contained any words of express advocacy.

constitutionality of 11 C.F.R. § 100.22(b). *See FEC v. Furgatch*, 807 F. 2d 857 (9th Cir. 1987), *cert denied*, 484 U.S. 850 (1987); *Virginia Society for Human Life v. FEC* 263 F.3d 379 (4th Cir. 2001); and *Maine Right to Life Committee v FEC*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S Ct. 52 (1997).

1 Given these factors, the poll does not constitute express advocacy. Therefore, the ULCU
2 was not required to report its disbursements in connection with the poll. *See* 2 U.S.C. §
3 431(9)(B)(iii); *see also* 11 C.F.R. §§ 100.8(b)(4) and 104.6.

4 ***b. Neighborhood canvassing***

5 Three Goldenwest employees engaged in neighborhood canvassing to garner votes for
6 Mr. Bishop shortly before the Republican primary election. *See* Clarke Affidavit, at ¶¶ 3-4.
7 However, information provided by the member credit unions shows that this campaign activity
8 was conducted by the individual employees on a volunteer basis during their lunch hours, which
9 were regular non-working hours, and was not authorized by the credit unions. *See id.* Thus, the
10 neighborhood canvassing did not constitute an internal communications expenditure, and the
11 credit unions were not required to report its costs under the Act. *See* 2 U.S.C. § 431(9)(B)(iii);
12 *see also* 11 C.F.R. §§ 100.8(b)(4) and 104.6. Further, the neighborhood canvassing did not
13 constitute a contribution to Mr. Bishop's campaign, because volunteer services provided by
14 individuals to a political campaign without compensation are not deemed contributions.
15 *See* 11 C.F.R. § 100.7(b)(3).

16 The affidavit from Mr. Clark, Goldenwest's President and Chief Executive Officer,
17 further sets forth that the three Goldenwest employees were volunteers for the Bishop campaign;
18 that this volunteer activity was not conducted at Goldenwest's facilities; and it did not interfere
19 with the employees' ability to perform their normal daily work. *See* Credit Unions' Response, at
20 p. 18; *see also* Clarke Affidavit, at ¶ 2. "No executive or employee of Goldenwest, the [ULCU],
21 or any of the other [c]redit unions w[as] compensated to canvass voters, during regular work
22 hours or otherwise." *See* Clarke Affidavit, at ¶¶ 3-4.

1 The remaining member credit unions specifically denied that any of their employees
2 engaged in neighborhood canvassing. *See Credit Unions' Response*, at p. 17. Each provided
3 sworn affidavits from their respective executive officers. Specifically, the executive officers set
4 forth that they

5 (1) were not aware of any employee who canvassed the neighborhoods
6 and requested votes for Mr. Bishop during regular work hours;

7
8 (2) were not aware of any employee walking door-to-door during
9 regular work hours and advocating votes for Mr. Bishop; and

10
11 (3) did not authorize or compensate any employee to canvass
12 neighborhoods or walk door-to-door during regular work hours or
13 at any other time.

14
15 *See Affidavit of Diona Perry, President and Chief Executive Officer of Box Elder County Credit*
16 *Union; see also Affidavit of Trena E. Anderson, Assistant Vice-President of Deseret First Credit*
17 *Union; see also Affidavit of Randy S. Gailey, President and Chief Executive Officer of Horizon*
18 *Credit Union; see also Affidavit of Fred Nydegger, Senior Vice-President for Business*
19 *Development and Government Affairs of Mountain America Credit Union; see also Affidavit of*
20 *Dennis Child, President and Chief Executive Officer of USU Community Credit Union; see also*
21 *Affidavit of Steven Christensen, President and Chief Executive Officer of Tooele Federal Credit*
22 *Union.*

23 No information suggests that the neighborhood canvassing constituted a contribution to
24 Mr. Bishop's campaign by any of the credit unions.

25 Therefore, this Office recommends that the Commission find no reason to believe that the
26 Utah League of Credit Unions, America First Credit Union¹⁴, Box Elder County Credit Union,

¹⁴ The complaint does not specifically allege that America First took part in any telephone polling, or that its employees engaged in neighborhood canvassing. *See Complaint*, p. 3. In response to the complaint, America First states, "the [c]omplaint also makes other general allegations, but not particularly against this respondent America

Deseret First Credit Union, Goldenwest Credit Union, Horizon Credit Union, Mountain America Credit Union, Tooele Federal Credit Union, and USU Community Credit Union violated 2 U.S.C. § 441b(a).

B. Bishop Legally Obtained the Signature Line of Credit from America First Credit Union.

Seven days before the Republican primary election, Mr. Bishop obtained a signature loan in the amount of \$40,000 from America First, and subsequently lent the proceeds of the loan to his Committee.¹⁵ See Complaint, at p. 3; see also Bishop's Response, at pp. 1-2; see also America First's Response, at p. 7. Any candidate who receives a contribution in connection with his campaign shall be considered as having received that contribution as an agent of his authorized committee. See 2 U.S.C. § 432(e)(2). A "contribution" as defined by the Act, includes any loan, or anything of value made by any person for the purpose of influencing any election for Federal office. See 2 U.S.C. § 431(8)(A). However, 2 U.S.C. § 431(8)(B)(vii) exempts from the definition of "contribution" any loan of money by a credit union made in accordance with applicable law and in the ordinary course of business, provided such loan is evidenced by a written instrument, subject to a due date or amortization schedule, bears the usual and customary interest rate of the lending institution, and is made on a basis which assures repayment. See 11 C.F.R. § 100.7(b)(11). Mr. Bishop and America First submitted loan

First has no information about allegations that do not pertain to it or information about the conduct of others " America First's Response, at p. 16. The responses submitted by the ULCU and the other member credit unions show that the telephone polling was commissioned and conducted only by the ULCU, and that only three Goldenwest employees engaged in neighborhood canvassing during non-working hours. Therefore, based upon available information, America First does not appear to have taken part in the telephone polling or neighborhood canvassing

¹⁵ Regarding the complaint's allegation that Mr. Bishop lent \$23,000 of his personal funds to the Committee in February and March 2002, this Office believes that those loan transactions do not rise to the level of a violation of the Act. Candidates for Federal office may make unlimited expenditures from personal funds See 11 C.F.R. § 110.10. Moreover, Mr. Bishop timely and fully disclosed the loan transactions to the Commission

1 documentation, which showed that the signature loan was made in the ordinary course of
2 business and on a basis which assures repayment.

3 Mr. Bishop's signature loan is evidenced by a "Loanliner Security Agreement," dated and
4 signed on June 17, 2002. The agreement sets forth that the loan amount is \$40,000, and that it
5 shall be repaid at a 9.5000% annual variable percentage rate in monthly installments starting
6 July 30, 2002. *See Bishop's Response*, at pp. 1-3 and Attachment A; *see also America First's*
7 *Response*, at p. 10 and Attachment 8. The interest rate provided for by the agreement was in
8 keeping with America First's usual and customary rate. *See id.* At the time Mr. Bishop's
9 signature loan was approved, the advertised interest rate for a 48-month signature loan was
10 9.50%. *See Chapman Affidavit*, at ¶ 10. In addition, there is an amortization schedule, which
11 sets forth that Mr. Bishop had 48 months to repay the loan. *See id.* Mr. Bishop repaid the full
12 principal amount of the loan with an additional \$2,130.94 in interest payments in only 11
13 months. *See America First's Response*, at pp. 10-11 and Attachment 5; *see also Bishop's*
14 *Response*, at p. 2 and Attachment B.

15 America First asserts that it followed its usual and customary credit check before granting
16 the loan to Mr. Bishop, and in doing so determined that he was a good credit risk. In granting the
17 signature loan to Mr. Bishop, America First "and all its employees, credit risk analysts and senior
18 loan officers followed every written guideline, internal point score system and computer
19 generated recommendation [it] routinely uses in making loans." *America First's Response*, at
20 pp. 7-8. As is required by any applicant for a signature loan from America First, Mr. Bishop
21 completed a financial application which was reviewed by a loan officer and approved by the
22 market branch manager. *See Chapman Affidavit*, at ¶¶ 5-11. Further, the amount of the loan was
23 within the range that America First typically grants: \$1,000 to \$50,000. *See Chapman Affidavit*,

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1 at ¶ 5. According to America First, "a signature loan is a publicly-advertised product regularly
2 promoted in [its] literature and is designed to give credit union members ready access to amounts
3 [it] has available to lend." America First's Response, at p. 9.

4 Before granting the loan, America First reviewed all of Mr. Bishop's personal financial
5 information

1 The Commission's regulations define the term "made on a basis that assures repayment"
2 as meaning that the loan is secured by either direct collateral or by the pledge of future receipts.¹⁷
3 See 11 C.F.R. §§ 100.7(b)(11)(i)(A) and (B). Mr. Bishop's signature loan was not supported by
4 direct collateral, nor were future receipts pledged to secure the signature loan. However, where
5 the requirements of 11 C.F.R. §§ 100.7(b)(11)(i)(A) and (B) have not been met, the Commission
6 shall consider the totality of the circumstances to determine whether a loan was "made on a basis
7 which assures repayment" as defined by its regulations.¹⁸ See 11 C.F.R. § 100.7(b)(11)(ii).

8 The Commission has recognized that a signature line of credit opened by a candidate, the
9 funds of which were used for his campaign, met the totality of the circumstances test set forth in
10 11 C.F.R. § 100.7(b)(11)(ii) where the line of credit was based on the candidate's personal
11 financial status; there was evidence of a longstanding relationship between the lending institution
12 and the candidate; the terms of the agreement, including the interest rate and other provisions for
13 repayment, did not appear to be out of the ordinary or unduly favorable to the candidate; and the
14 documents submitted by the candidate to the Commission indicated that the agreement was a
15 standard line of credit issued by the bank for other customers. See Advisory Opinion 1994-26.

16 Similarly, America First's signature loan to Mr. Bishop was made on the same terms and
17 conditions as loans granted to other customers. For example, America First's signature loans do
18 not require direct security because they are offered in less than \$50,000 amounts and to members

¹⁷ A loan, including a line of credit, shall be considered "made on a basis which assures repayment" if the lending institution making the loan has either: (1) perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of which is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and is documented in writing by the candidate or political committee, or (2) the candidate or political committee have given the lending institution a written agreement pledging future receipts. See 11 C.F.R. §§ 100.7(b)(11)(i)(A) and (B).

¹⁸ If the requirements set forth in paragraph (b)(11)(i) of this section are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment. 11 C.F.R. § 100.7(b)(11)(ii).

1 with good credit. *See* Chapman Affidavit, at ¶ 10. Instead, America First requires its customers
2 to agree to and acknowledge its cross-collateral and offset provisions *See* America First's
3 Response, at p. 9; *see also* Chapman Affidavit, at ¶¶ 10, 13. According to America First's
4 practice, borrowers stipulate that any collateral pledged for other outstanding loans with the
5 credit union and any other assets the borrower has on deposit may be seized for non-payment of a
6 signature loan. *See id.*

7 The Loanliner Security Agreement signed by Mr. Bishop contains America First's usual
8 and customary cross-collateral and offset provisions.¹⁹ Mr. Bishop had an outstanding
9 collateralized car loan for a 1998 Honda Civic, and other deposits on account, which America
10 First considered adequate to satisfy the cross-collateralization and offset provisions of the
11 signature loan. *See* America First's Response, at p. 10, *see also* Chapman Affidavit, at ¶¶ 12, 13.
12 The fair market value of Mr. Bishop's car (outstanding balance in June 2002 was _____ or the
13 amounts Mr. Bishop had on deposit at America First are not specified in the response. *See*
14 America First's Response, Attachment 2. Even so, no evidence suggests that the terms of the
15 signature loan granted to Mr. Bishop were unduly favorable to him or out of the ordinary, since
16 many of America First's outstanding signature loans are not secured by direct collateral.
17 *See* Chapman Affidavit, at ¶ 4.

18 The evidence provided by America First shows that the signature loan was paid in full
19 well ahead of schedule; it was executed in the same manner and pursuant to the same customs
20 and procedures that it makes thousands of other signature loans, and Mr. Bishop's personal

¹⁹ "By signing below, by endorsing the proceeds check or by using the amount advanced and deposited into your share/share draft account you agree. (1) To make and be bound by the terms of this Security Agreement including the cross collateral clause, (2) To make payments as disclosed above in accordance with the terms of your Plan." *See* America First's Response, Attachment 8.

1 financial information was thoroughly considered before making the loan. In keeping with its
2 practice, America First considered all of Mr. Bishop's personal financial history in determining
3 whether he was a good credit risk. Moreover, the evidence shows that America First made a
4 profit on the signature loan. See America First's Response, at pp. 10-11 and Attachment 5,
5 see also Bishop's Response, at p. 2 and Attachment B. These factors, and Mr. Bishop's
6 longstanding relationship with America First (his accounts on deposit and previous loans
7 extended to him) show that the signature loan to Mr. Bishop was made in the ordinary course of
8 business and on a basis which assures repayment in accordance with the Act and the
9 Commission's regulations.

10 Therefore, this Office recommends that the Commission find no reason to believe that
11 America First Credit Union violated 2 U.S.C. § 431(8)(B)(vii), and find no reason to believe that
12 Rob Bishop for Congress and Christopher Larry Brown, as treasurer, or that Rob Bishop, the
13 candidate, violated 2 U.S.C. §§ 431(8)(B)(vii) or 432(e)(2).

14 **III. RECOMMENDATIONS**

- 15 1. Find no reason to believe that Rob Bishop for Congress and Christopher Larry
16 Brown, as treasurer violated 2 U.S.C. §§ 431(8)(B)(vii) or 432(e)(2)
17
- 18 2. Find no reason to believe that Rob Bishop violated 2 U.S.C. §§ 431(8)(B)(vii) or
19 432(e)(2).
20
- 21 3. Find no reason to believe that the Utah League of Credit Unions violated 2 U.S.C.
22 §§ 431(9)(B)(iii) or 441b(a)
23
- 24 4. Find no reason to believe that America First Credit Union violated 2 U S C
25 §§ 431(8)(B)(vii), 431(9)(B)(iii) or 441b(a)
26
- 27 5. Find no reason to believe that Box Elder County Credit Union violated 2 U S C
28 §§ 431(9)(B)(iii) or 441b(a).
29
- 30 6. Find no reason to believe that Deseret First Credit Union violated 2 U S C
31 §§ 431(9)(B)(iii) or 441b(a)

7. Find no reason to believe that Goldenwest Credit violated 2 U.S.C. §§ 431(9)(B)(iii) or 441b(a).
8. Find no reason to believe that Horizon Credit Union violated 2 U.S.C. §§ 431(9)(B)(iii) or 441b(a).
9. Find no reason to believe that Mountain America Credit Union violated 2 U.S.C. §§ 431(9)(B)(iii) or 441b(a).
10. Find no reason to believe that Tooele Federal Credit Union violated 2 U.S.C. §§ 431(9)(B)(iii) or 441b(a).
11. Find no reason to believe that USU Community Credit Union violated 2 U.S.C. §§ 431(9)(B)(iii) or 441b(a).
12. Approve the appropriate Factual and Legal Analyses.
13. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

12/16/04
Date

BY: Rhonda J. Vosdigh, LLC
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Attachment:

1. Vendor Invoice Chart

Credit Union	Type of Communication	Dates	FEC Form 7 Reported Expenditures	Vendors	Invoice Dates	Quantity	Total Cost	Reported Expenditures v. Vendor Invoice Totals
America First	Direct mail	6/14 through 6/21/02	\$33,701.16 ¹	SLM&P CU-Serve	6/28/02	136,900 postcards	\$33,701.14	Over reported by \$.02
USU Community	Direct mail	6/14 through 6/20/02	\$7,283.56	SLM&P CU-Serve	6/13/02 6/30/02	29,872 postcards	\$7,283.56	Equal
Mountain America	Direct mail Telephone bank	6/14 through 6/24/02	\$6,427.26 ²	SLM&P CU-Serve Weblink	6/13 & 28/02 6/30/02 6/25/02	23,272 postcards 5,518 recorded messages	\$6,426.07 ³	Over reported by \$1.19
Toocle	Direct mail Telephone bank	6/14 through 6/24/02	\$4,658.19 ⁴	SLM&P CU-Serve Weblink	6/28/02 6/30/02 6/25/02	10,906 postcards 18,277 recorded messages	\$4,658.20 ⁵	Under reported by \$.01
Deseret First	Direct mail Telephone bank	6/14 through 6/24/02	\$4,665.48 ⁶	SLM&P CU-Serve Weblink	6/28/02 6/30/02 6/25/02	12,428 postcards 13,980 recorded messages	\$4,665.48 ⁷	Equal
Horizon	Direct mail	6/14 through 6/21/02	\$3,026.76	SLM&P CU-Serve	6/28/02 6/30/02	12,184 postcards	\$3,026.78	Under reported by \$.02
Goldenwest	Direct mail	6/14 through 6/21/02	\$3,146.56 ⁸	SLM&P CU-Serve	7/2/02 6/30/02	12,644 postcards	\$3,146.53	Over reported by \$.03
Box Elder County	Direct mail	6/14 through 6/21/02	\$ 2,067.76	SLM&P CU-Serve	7/2/02 6/30/02	8,676 postcards	\$2,067.74	Over reported by \$.02

¹ Communications costs for the period total \$33,701.16, and not \$39,071.87 as set forth in America First's disclosure report.

² This figure represents \$5,795.28 in reported direct mail costs, and \$631.98 in reported telephone message costs. Communications costs for the period total \$6,427.26, and not \$6,426.06 as set forth in Mountain America's disclosure report.

³ This figure represents \$5,794.09 in postcard invoices, and \$631.98 in reported telephone messages invoices.

⁴ This figure represents \$2,622.72 in reported direct mail costs, and \$2,035.47 in reported telephone message costs.

⁵ This figure represents \$2,622.73 in postcard invoices, and \$2,035.47 in telephone messages invoices.

⁶ This figure represents \$3,102.68 in reported direct mail costs, and \$1,562.80 in reported telephone message costs.

⁷ This figure represents \$3,102.68 in postcard invoices, and \$1,562.80 in telephone messages invoices.

⁸ Communications costs for the period total \$3,146.56, and not \$3,146.52 as set forth in Goldenwest's disclosure report.